

**K & M Produce and Truck Drivers & Helpers
Local Union No. 823, affiliated with Interna-
tional Brotherhood of Teamsters, Chauffeurs,
Warehousemen & Helpers of America. Case 17-
CA-10024**

June 16, 1981

DECISION AND ORDER

Upon a charge filed on November 10, 1980, by Truck Drivers & Helpers Local Union No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called the Union, and duly served on K & M Produce, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 17, issued a complaint on December 19, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding. Respondent has failed to file an answer and thus the allegations of the complaint stand uncontroverted.

On February 23, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on February 27, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has failed to file a response to the Notice To Show Cause.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be

so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that, unless an answer to the complaint is filed by Respondent within 10 days from the service thereof, "all of the allegations in the complaint shall be deemed to be admitted to be true and may be so found by the Board."

Further, according to the memorandum in support of the Motion for Summary Judgment, counsel for the General Counsel, by letter dated February 3, 1981, specifically informed Respondent's owners, Lloyd Creekmore, William Kimble, and Steve McKellar, that failure to file an answer to the complaint by February 11, 1981, possibly would result in the filing of the Motion for Summary Judgment. This letter was received by Respondent on February 5, 1981.

To date, neither an answer to the complaint nor a response to the Notice To Show Cause has been filed by either Respondent or any of its owners. No good cause to the contrary having been shown, the allegations of the complaint herein are deemed to be admitted and are so found by the Board. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is, and has been at all times material herein, a proprietorship engaged in the nonretail sale and distribution of produce and frozen foods at a facility located at 512--520 East 7th Street, Joplin, Missouri, herein called the facility. Respondent, in the course and conduct of its business operations within the State of Missouri, annually purchases goods and services valued in excess of \$50,000 directly from sources located outside the State of Missouri, and annually sells goods and services valued in excess of \$50,000 directly to customers located outside the State of Missouri.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Truck Drivers & Helpers Local Union No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of

America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All employees at the Joplin, Missouri, facility engaged in manual labor such as truck drivers, helpers, housemen, fruit packers, warehousemen, deliverymen, loaders, unloaders, and checkers; excluding office clerical employees, salesmen, janitors, watchmen, owners, partners, officers, managers, assistant managers and supervisors as defined in the Act.

From on or about February 1, 1979, until on or about September 6, 1980, Thomas Fruit Company was engaged in the nonretail sale and distribution of produce and frozen foods at the facility. On or about July 1, 1979, Thomas Fruit Company recognized the Union as the exclusive bargaining representative of the employees in the above-described unit. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period July 4, 1980, until July 3, 1981.

On or about September 6, 1980, Respondent purchased the assets of Thomas Fruit Company, including the building and part of the inventory, equipment, and trucks and, since on or about September 8, 1980, has been engaged in the same business operations, at the same location, selling the same products and services to substantially the same customers, and has had as a majority of its employees individuals who were previously employed by Thomas Fruit Company at the facility. Accordingly, we find that by virtue of these operations Respondent has continued as the employing entity and is a successor of Thomas Fruit Company. We further find that at all times material herein the Union has been and continues to be the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of all of Respondent's employees in the above-described unit at the facility. *N.L.R.B. v. Burns International Security Services, Inc.*, 406 U.S. 272 (1972).

Commencing on or about October 23, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all Respondent's employees in the above-described unit. Since on or about October 23, 1980, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive

representative for collective bargaining of all employees in the said unit.

In addition, on or about October 23, 1980, the Union requested Respondent to furnish the Union with the following information:

All information and documentation evidencing the wages, benefits, and other terms and conditions of employment extended employees of the successor enterprise.

The information requested by the Union on or about October 23, 1980, is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the employees in the above-described unit. Since on or about October 23, 1980, Respondent has failed and refused to furnish the Union said information requested by it.

Accordingly, we find that Respondent has, since on or about October 23, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement. In this connection, we shall order that Respondent, upon request, furnish to the Union the information that it requested on October 23, 1980.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. K & M Produce is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Truck Drivers & Helpers Local Union No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees at Respondent's Joplin, Missouri, facility engaged in manual labor such as truck drivers, helpers, housemen, fruit packers, warehousemen, deliverymen, loaders, unloaders, and checkers, but excluding office clerical employees, salesmen, janitors, watchmen, owners, partners, officers, managers, assistant managers and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the above-named labor organization has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 23, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By refusing on or about October 23, 1980, and at all times material thereafter, to bargain collectively with the above-named labor organization as the exclusive representative of all employees of Respondent in the appropriate unit by refusing to furnish the said labor organization with information concerning the present terms and conditions of employment of the employees in the above-described unit, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By the aforesaid refusals to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, K & M Produce, Joplin, Missouri, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Truck Drivers & Helpers Local Union No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive bargaining representative of its employees in the following appropriate unit:

All employees at Respondent's Joplin, Missouri, facility engaged in manual labor such as truck drivers, helpers, housemen, fruit packers, warehousemen, deliverymen, loaders, unloaders, and checkers; excluding office clerical employees, salesmen, janitors, watchmen, owners, partners, officers, managers, assistant managers and supervisors as defined in the Act.

(b) Refusing to bargain collectively with the above-named labor organization by refusing to furnish the said labor organization with information concerning the present terms and conditions of employment of the employees in the above-described unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, bargain collectively with the above-named labor organization by furnishing it with information concerning present terms and conditions of employment requested in its letter of October 23, 1980.

(c) Post at its facility at 512-520 East 7th Street, Joplin, Missouri, copies of the attached notice marked "Appendix."¹ Copies of said notice, on

¹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by" *Continued*

forms provided by the Regional Director for Region 17, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Truck Drivers & Helpers Local Union No. 823, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to bargain collectively with the above-named labor organization by refusing to furnish it with the information concerning present terms and conditions of employment it has requested with respect to the employees in the unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All employees at our Joplin, Missouri, facility engaged in manual labor such as truck drivers, helpers, housemen, fruit packers, warehousemen, deliverymen, loaders, unloaders, and checkers; excluding office clerical employees, salesmen, janitors, watchmen, owners, partners, officers, managers, assistant managers, and supervisors as defined in the Act.

WE WILL, upon request, bargain collectively with the above-named labor organization by furnishing it with the information requested in its October 23, 1980, letter.

K & M PRODUCE